IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3503 of 2001
with
FIRST APPEAL No 75 of 1999
with
CIVIL APPLICATION No 8178 of 2000
in
FIRST APPEAL No 75 of 1999
with
CIVIL APPLICATION No 9083 of 2001
in
FIRST APPEAL No 3503 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

VIRESHCHAND CHANDRAKANT DESAI

Appearance:

MR MAULIN RAVAL for Appellant

MR MD PANDYA for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of Order: /02/ 2002

C.A.V. COMMON JUDGMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Against the judgment and order rendered in Municipal Valuation Appeal No. 643 of 1995 by the Small Cause Court, Ahmedabad, on 23rd November, 1998, the assessee - the original applicant before the Small Cause Court and also the Ahmedabad Municipal Corporation (hereinafter to be referred to as "the Corporation"). who was original opponent before the Small Cause Court have preferred these appeals.

#. The facts relevant for deciding the disputes required to be narrated are as under.

#. The assessee is the owner as well as occupant of the premises admeasuring 16.50 sq. mts. which was purchased on payment of Rs. 62,000/=. The assessee is in possession of the premises since 20.5.93. The premises is situated at Sattar Taluka Society, Navrangpura, Ahmedabad.

#. The Corporation commenced assessment procedure for the year 1993-94 and Gross Rateable Value (hereafter to be referred to as "the GRV") of the premises was fixed at Rs. 25,862/=. Against the same, the assessee filed objections and the appellate officer of the Corporation fixed the GRV at Rs. 6,534/=. As contended by the assessee, he was, therefore, required to pay the said amount if the decision is accepted by the assessee even for the subsequent years. The assessee further contended that the Corporation could have increased the GRV provided there was change of user or there was any addition and/or alteration in the premises so as to enhance the value of the premises in question.

#. Being aggrieved by the aforesaid decision rendered by the appellate officer, the assessee preferred an appeal being Municipal Valuation No. 6876 of 1994 which is pending before the Small Cause Court, Ahmedabad. As pointed out from the record, the Valuation Officer of the Corporation fixed the GRV at Rs. 25,862/= for the year 1994-95. The objections which were filed by the appellant were not taken into consideration by the

appellate officer of the Corporation and he confirmed the GRV at Rs. 25,862/-. The appellate officer, while confirming the GRV at Rs. 25,862/= observed that the appellant was not present. The said order was challenged by the assessee by by preferring Municipal Valuation Appeal No. 643 of 1995. The Small Cause Court, Ahmedabad, after considering the documentary evidence placed before it and relying upon the decision of this Court in the case of Rajnikant Jesingbhai Sheth v. Rameshchandra Kantilal Bhatt & others [23 (2) GLR 711] held that in the instant case, it is not possible to separate the cost of the land and the cost of construction. Considering the submissions made by the learned counsel appearing for the parties, documents and the aforesaid decision, calculating the return of 7%, GRV was fixed at Rs. 4340/- for the year 1994-95. It is against this order, the assessee preferred First Appeal No. 75 of 1999, while the Corporation preferred First Appeal No. 3503 of 2001.

#. In the instant case, during the pendency of the First Appeals, the Corporation issued a bill alleging that the sum of Rs. 23,346/= is outstanding and called upon the assessee to make the payment. According to the assessee nothing was outstanding as claimed and therefore, the assessee preferred Civil Application No. 8178 of 2000, seeking permanent injunction restraining the Corporation from enforcing the demand. The assessee pointed out by giving all necessary details that the Corporation has been informed repeatedly and particulars were solicited, but without any response, unjustified and illegal demand was raised from a regular taxpayer. After hearing the parties ultimately, the Court protected the assessee. It is required to be noted as pointed out by the assessee that the Court directed the Corporation to file affidavit. However, at a later stage, affidavit was filed not disclosing the true and correct facts. By filing affidavit-in-rejoinder, it was pointed out that in the matter of assessment proceedings at all stages namely initial stage, hearing valuation appeals, prosecuting the proceeding before the Small Cause Court and the First Appeals, the Corporation was taking the matters very lightly.

#. At this juncture, it would be relevant to point out that during this session of hearing the Municipal Valuation Appeals, we have come across several matters filed by the Corporation and in almost all the matters, the appeals were lodged by the Corporation much after the period of limitation; in several matters though earlier GRV fixed by the Small Cause Court were not challenged

and even though there was no change of use of the property or increase in the value of the property, subsequent orders passed by the Small Cause Court for subsequent years were challenged. It was also noticed that the bills at inflated GRV were issued though the same were reduced by the Corporation itself for the previous years. In many matters, with a view to see that the matters are taken up earlier, despite the fact that the assessee was not served, a show was made that the assessee was served and on the basis of the statement or affidavit to that effect, the Court was requested to pass the orders. We have come across several cases wherein there is hardly remarkable difference between the GRV fixed by the Corporation and the Small Cause Court, yet the appeals were preferred and on pointing out these aspects, the appeals were withdrawn as not pressed. So far as the present case is concerned, when notice of this Court in application for condonation of delay was issued, the assessee was not occupying the premises and the same was closed. However, on behalf of the Corporation, an affidavit was filed stating therein that the assessee was served at the address indicated in the bill. To our surprise, on the reverse page of the process itself, it was noted by the process server that the office is closed. In view of the said affidavit stating that the assessee is served, delay was condoned. The assessee is an advocate regularly practising in this Court and he was very much surprised when he learnt this on inspection of the record. This is only an example. We have come across several cases wherein such things were found. A grievance was made by the assessee that the honest and poor taxpayers have to suffer and undergo hardships and they are required to incur unnecessary expenditure. With regard to large properties, the Corporation settles the cases. It was also pointed out by the assessee that had the appellate officer taken care to examine the previous record, he would have noted that the appellate officer has reduced the GRV from Rs. 25,862/= to Rs. 6,534/= the situation would have been different. The assessee submitted that there are officers who are hard working and honest who discharge their duties and try their best to act in accordance with law. He submitted that for example, in earlier year, Appellate Officer himself examined the matter and reduced the GRV. But the subsequent Appellate Officer even did not take care to examine the record and under the guise that the year being separate, he was of the view that it is incumbent upon the assessee to appear before him and to plead his case and as the assessee could not remain present, the the order was confirmed. The assessee submitted that the order was confirmed by the appellate officer not on the

date of hearing or soon thereafter, but after the delayed period.

#. The assessee submitted that the appellate authority is not required to act mechanically or arbitrarily, but the appellate authority has to examine the record and to pass the order after carefully examining the record. In our opinion, the submissions made by the assessee are absolutely correct. When the assessee is taxed, it is the bounden duty of the taxing authority to follow the procedure. Hearing before the taxing authority should be real hearing. There should be no empty formality. When a quasi-judicial order is passed, reasons are required to be recorded in the order. There must be material or data on the basis of which GRV is fixed. To determine the fair return, amount invested for occupying the property or in absence thereof, market price is to be considered. There are several other modes in the absence of a registered sale deed or receipts indicating full payment. [Society or an organisation such as in the building or in the vicinity of the building in every premises what is the fair return determined]. But in the instant case, merely because the assessee was not present, the appellate officer confirmed the order made by the Valuation Officer without considering the earlier order and the aforesaid aspect.

#. At this stage, we would like to point out that the Apex Court has pointed out in the case of Lt.Col. P.R. Chaudhary (Retd.) v. Municipal Corporation of Delhi, [2000 (4) SCC 577] in para 7 as under.

> "The assessing authority determines the objections for fixing the rateable value and acts in a quasi-judicial capacity. Its orders are appealable. It cannot act in arbitrary fashion ignoring the principles of law laid down by the Court. It cannot fall back on the specious plea that it has no means to act on the principles of law laid down by this Court. Even notice for enhancement of rateable value has to be based on reasons which must exist on record and the owner is entitled to be appraised of those reasons."

##. For the empty formality, the assessee pointed out that the bill was issued and even demand was made before hearing was concluded before the appellate officer. The assessee pointed out that the bill for the assessment year 1994-95 issued by the Corporation is on the record. It was prepared on 16.7.94 wherein the GRV is fixed at Rs. 25,862/=. By the said bill, the assessee was called

upon to make the payment on 27.11.94. On behalf of the assessee, it was submitted that the procedure adopted by the Corporation is nothing but a mockery and to indicate the same, he drew our attention to the order passed by the appellate officer for the assessment year 1994-95 which is produced on the record. Translated version of the order (original in Gujarati) states as under.

> "The appellant (the assessee) was called upon to remain present for hearing on 28.7.94 by a letter dated 22.7.94 (U.P.C. - Under Certificate of Posting). The assessee was informed to produce the documentary evidence. However, the applicant (the assessee) has not remained present on the date of hearing and the documentary evidence in support of his objection has not been produced and therefore, in absence of evidence, the GRV fixed by the Valuation Officer at Rs. 25,862/= is reasonable and is confirmed."

What is important to note is that the order is signed in 1995. From the documents produced on the record, it was pointed out to the Court that the decision was already taken and the bills were already issued and therefore, there was no fun in calling the assessee for the assessment year 1994-95 and to make a show that the Corporation is following the principles of natural justice. When the bill was already issued before the hearing was concluded, it is difficult to understand how the Corporation is following the principles of natural justice. On 22.7.94, a letter is addressed to the assessee wherein the date of hearing was fixed on 28.7.94. Then what prevented the appellate officer from issuing a registered letter so as to enable him to know that the assessee has received information about the date of hearing fixed by him. Under certificate of posting at the most would mean that the letter has been posted, but it would not mean that it has reached to the person concerned soon after it was posted. Therefore, it is incumbent upon the authority concerned to send the registered acknowledgment letter so as to enable him to know that the assessee is served. Under these circumstances, it is clear that in the instant case, the Corporation has merely made a show that after following the procedure, the appellate officer has made the order.

##. In the instant case, for the previous year i.e. 1993-94, annual assessment was made by fixing the GRV at Rs. 25,862/= by the Valuation Officer of the Corporation. Harkat application no. 146 was submitted and on considering the evidence produced by the assessee,

the appellate officer fixed the GRV at Rs. 6534/= on 30th March, 1994. Thus, on the record of the Corporation, when the assessment was reduced by the appellate officer from Rs. 25,862/= to Rs. 6534/=, then in the absence of any change in the property so as to increase its value or change or user, how the Valuation Officer could have fixed the GRV at Rs. 25,862/= for the next year?

11.A In the case of Oriental Fire & General Insurance Co. In the case of Oriental Fire & General Insurance Co. Ltd., [35 (2) GLR 1498], the Court pointed out as under.

> "Under Section 129(c) of the BMPC Act general tax at prescribed rate is leviable on the rateable value of the property. Rule 3(7) of the Taxation Rules provides that in order to fix the rateable value of any building, land or premises, there shall be deducted from the amount of annual letting value of such building a sum equal to 10% of the annual letting value. It, therefore, becomes necessary to determine the "annual letting value."

The Court further held that in case of self-occupied premises, rateable value has to be arrived at by applying the principle enunciated in the case of Devan Daulat Rai Kapoor etc. etc., v. New Delhi Municipal Committee and anr. [AIR 1980 SC 541], in the case of Dr. Balbir Singh and others. v. M/s. M.C.D. and others [AIR 1985 SC 339] and in the decision of the Gujarat High Court in the case of Rajnikant Jeshingbhai Sheth & ors. v. Rameshchandra Kantilal Bhatt & ors. [23 (2) GLR 711].

##. On behalf of the Corporation, it was submitted that the year being independent, it is open for the Corporation to arrive at a conclusion and it is for the assessee to produce the documents. No doubt, the Division Bench of this Court has taken the view in the case of Municipal Corporation of the City of Ahmedabad v. Oriental Fire & General Insurance Co. Ltd., [35 (2) GLR 1498] that the Act does not postulate that the appellate decision for one year will ipso facto be regarded as a decision for the other years as well. However, at the same time, the Division Bench has pointed out that according to Rule 21, entries of the earlier year can be adopted in the subsequent years. The Division Bench which heard the aforesaid matter subsequently in the case of Municipal Corporation of the City of Ahmedabad v. Moti Apartment Owners Association [35 (2) GLR 1662] pointed out in para 6 as under.

"6. One point however, needs to be reiterated, whether the rateable value so fixed in the case of self-occupied property can be revised at different intervals. The answer to this question is very obvious and is in the negative. The reason for this is very simple. The rateable value of self-occupied premises has to be fixed either by determining hypothetical rent on the basis of the reasonable return of the cost of construction and the cost of land or on the basis of the properties which are let and which are similar in nature. Once determination takes place by applying the said principle, the said rateable value cannot possibly undergo any change. As long as the premises remain in self-occupation, the rateable value for the succeeding years will have to be that which was determined in accordance with law for the first year. The only occasion when the Corporation or the Municipality will get a right to revise the rateable value will be, if the owner occupant makes additions or alterations or incurs any capital expenditure on that property itself. It has to be clearly understood that carrying out minor repairs or white-washing cannot be regarded as a capital expenditure so as to permit enhancement of rateable value. A question may also arise whether a rateable value can be increased in case of change of ownership. Here again the rateable value is relatable to the property in question and if the premises continued to be the self-occupied property by the new owner, change in the ownership would not and should not ipso-facto result in the increase of the rateable value. It is only if further additions or alterations are undertaken and capital expenditure incurred by the new owner, can there be any change in the rateable value of self-occupied premises."

Thus, the Division Bench made it very clear that once the rateable value is determined, rateable value cannot possibly undergo any change. As long as premises remain in self-occupation, rateable value for successive years will have to be that which was determined in accordance with law for the first year. In the instant case, it was submitted that merely because the assessee did not remain present, the appellate officer was not absolved from his duties to verify the record and to ascertain the GRV fixed for earlier year. If the earlier appellate officer

has fixed the GRV, then without any change in the property so as to increase the value or change of user, it was not open for the subsequent appellate officer to confirm the order made by the Valuation Officer. In our opinion, neither the Valuation Officer nor the appellate officer have taken care while discharging their duties for determining the GRV. From what is stated hereinabove, it is clear that the procedure adopted by the Corporation is arbitrary not in consonance with the provisions of the BPMC Act and the Taxation Rules contained in Chapter VIII of Schedule A to the BPMC Act. It is also required to be noted that neither the Valuation Officer nor the appellate officer has cared to follow the binding judicial precedents of this Court and the Apex Court.

##. A further grievance made by the assessee is that the Corporation is not following the decisions of this Court. It was submitted that there is no controversy that in respect of the buildings which are let out, the municipal tax is to be fixed on the basis of the fair return on the value of the land and buildings. Despite the various judicial pronouncements in this behalf and even after the assurance given to this Court, no guidelines have been issued to the assessing authorities and the public at large, stating as to how fair return of the value of the land and buildings should be determined and what aspects shall be taken into consideration while fixing the fair return of the properties. Out attention was drawn to the decision of the Division Bench in First Appeal No. 1342/93 dated 7.10.94. Before the Division Bench, grievance was made that no guidelines have been issued to the assessing authority or made available to the public at large stating how fair return of the value of the land and building should be determined. The Court recorded the statement made on behalf of the Corporation as under.

> "Mr. S.N.Shelat states that in not too distinct future and possibly within a fortnight guidelines will be issued to the assessing authorities which will be made public stating as to how the fair return of the value of the land and building should be determined and while fixing the fair return, different uses of the building will be taken into consideration. Mr. Shelat further states that the government is actively considering reducing the rate of general tax drastically and hopefully within the next fortnight. Perhaps this is a good Diwali present which the government can give to its citizens."

The aforesaid appeal was preferred in respect of the premises which was occupied by the owner himself. While remanding the matter, the Division bench pointed out as under.

> "It is not necessary to give any further directions at this stage for the simple reason that in the aforesaid judgment itself (Municipal Corporation of the City of Ahmedabad v. Oriental Fire & General Insurance Co. Ltd., in First Appeal No.829/83, decided on 8th September, 1994, it has been stated that for fixing the standard rent, nature of construction and use to which the property is put has to be taken into account while fixing the fair return on the capital value. This is an exercise which will be undertaken by the Small Cause Court."

##. While hearing this matter, we called upon the learned advocate appearing for the Corporation to point out the method in which the GRV is arrived at. Sub-clause (aa) of Sub-section (ii) of Section 2(1A) of the BPMC Act specifically states that the annual return for which such building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use that includes all the payments made or agreed to be made to the owner by the person occupying the building or the land or premises on account of occupation, taxes, insurance or other charges as incidental thereto. Keeping this in mind as to how the annual letting value which is to be based on the basis of the fair return is to be determined, statement was made before the Division Bench which we have reproduced earlier and it is a sorry state of affairs that despite the statement being made before the Court on 7th October, 1994, before us, nothing was produced despite the Corporation was called upon to point out the method in which the GRV is arrived at. It is in this background this matters are required to be considered.

##. The assessee pointed out before the Small Cause Court, Ahmedabad that an amount of Rs. 62,000/= was paid towards the purchase price of the premises in question admeasuring 16.59 sq. mts. The assessee produced documentary evidence vide exhs. 20 to 26 i.e. payment receipt and allotment letter. As indicated earlier, after hearing the appellant for the assessment year 1993-94, the appellate officer fixed the GRV at Rs. 6,534/=. Therefore, in any case, it was not open for the Corporation to fix the GRV at a higher amount in the

absence of change of user or value of the premises being increased or alteration etc. The assessee-appellant preferred Municipal Valuation Appeal No. 6876 of 1994 which is pending.

##. For the assessment year 1994-95, the Valuation Officer ignoring the aforesaid aspects fixed the GRV and though objections were filed, the appellate officer confirmed the said GRV. Thus, it is very clear that the appellate officer has acted arbitrarily without examining the record. In a case like this, without waiting for the assessee, the appellate officer was required to scrutinise the record and was required to pass the order. Even if that would have been done, it could not have been stated that the appellate officer has not examined the previous record. Therefore, the order made by the appellate officer is arbitrary and in violation of the norms and in our opinion, the appellate officer who was discharging his duties in quasi-judicial capacity acted arbitrarily ignoring the principles of law laid down by the Courts. In our opinion, the Valuation Officers are required to give reasons for arriving at the conclusion. Even if the taxpayer is not present, it is the bounden duty of the assessing authority to examine the record including that of previous year and by assigning reasons, he is required to indicate as to how the GRV is to be determined. The appellate officer who is required to hear the appeal, must have necessary material including that as to how the Valuation Officer has arrived at the conclusion. The assessee is justified in making the grievance that the appellate officer has acted in sheer disregard of the provisions of the BPMC Act and the Taxation Rules, more particularly when the bill no. 3212 for the assessment year 1994-95 dated 16.7.94 is issued and the appellate officer has given the date of 28.7.94 for hearing soon after the issuance of the bill. In our opinion, empty formality would not serve the purpose. It was pointed out to us that even earlier in two Special Civil Applications being Spl.C.A. No. 1569/98 decided on 20th March, 1996 by the Division Bench of this Court (Coram: Y.B. Bhatt & C.K. Buch, JJ) and Spl.C.A. No. 11117/00 decided on 13.11.2000 by the Division Bench of this Court (Coram: Y.B. Bhatt & M.C. Patel, JJ) directions were given to issue fresh bill after deciding the objections on a statement being made by the counsel for the Corporation. It was submitted that the issuance of the tax bill was prior to the hearing of the objections. In the instant case, no such direction is required to be given as the Small Cause has considered the matter on merits and has rendered the decision.

##. So far as the merits of the appeal are concerned, on behalf of the Corporation, it was contended before the Small Cause Court that as the premises is situated in Ellisbridge Ward and as the area is covered under T.P.Scheme since 1st July, 1950 and as facilities are available, aggregate price is not reflected. It was further contended that the area is well developed and the building is situated in prominent locality and therefore the appellate officer was of the view that when the assessee states that he has purchased the premises for Rs. 62,000/-, it does not reflect the correct price and the cost may not be less than Rs. 1.00 lac.

##. No material whatsoever was produced before the Small Cause Court to justify the contention. It is known fact that the value of the premises can be determined even by examining other instances. Having not done so, by making baseless allegations, it is not proper for the Corporation to say that the price of the property is more, more particularly when the assessee has produced the documentary evidence to show the price.

##. The Corporation further contended that the premises is located in Navrangpura area. It is required to be noted that earlier, there is reference to Ellisbridge Ward and thereafter it is stated that the premises is situated in Navrangpura area. Everyone who resides in Ahmedabad is aware about the Ellisbridge area as well as Navrangpura and when we put a question to the counsel for the Corporation, he was not in a position to convince us to understand as to what the Corporation is trying to suggest by pointing out two different areas.

##. It was contended that the assessee is the owner of the premises and therefore, the assessment is to be fixed on the basis of the cost of construction and on the value of the land. It is required to be noted that it was known to the appellate officer as to what could be the fair return and therefore for the previous year he reduced GRV from Rs. 28,682/- to Rs. 6,534/=. The appellate officer has taken into consideration the cost of construction and the value of the land and has arrived at the conclusion. However, the subsequent appellate officer has not bothered to do any exercise much less of perusing the record.

##. It was also contended that the assessee has not filed any complaint and the appeal cannot be filed against the bill. This submission is also without any basis. It is pointed out that Harkat application was preferred and the assessee was called for hearing and the

bill was issued before the proceedings were terminated. Therefore, the Corporation ought not to have raised such contentions which are factually incorrect. It is further contended on behalf of the Corporation that the said notice is legal and valid and no reliance can be placed on the previous appellate order. Learned counsel appearing for the Corporation could not justify the contention as to how reliance cannot be placed on the previous appellate order. The Small Cause Court has pointed out that the appeal was preferred against Harkat application no. 57, dated 17.1.95 for the year 1994-95 whereby GRV fixed by the Valuation Officer was confirmed.

##. As regards the value of the property, the Corporation has come out with a case that the value of the property would be more than Rs. 1.00 lac. When the appellant purchased the premises for Rs. 62,000/= for which he has produced receipts, if it is alleged that it is not correct price, it was for the Corporation to prove such facts. The Corporation has not produced before the Court any evidence suggesting that the value of the nearby premises is much higher than the value of the property shown by the assessee. When the documentary evidence along with allotment letter is produced, it is difficult to accept the contention raised by the Corporation. In our opinion, the Small Cause Court was justified in accepting the contention raised by the assessee. The Small Cause Court has followed the decision of this Court in the case of Rajnikant Jesingbhai Sheth v. Rameshchandra Kantilal Bhatt & others [23 (2) GLR 711]. We therefore find no reason to interfere with the order of the Small Cause Court, more particularly when neither before the Small Cause Court nor before this Court, the Corporation was in a position to point out that it is possible to bifurcate the amount so as to indicate that particular amount was the price of the land and particular amount was for the cost of construction.

##. The assessee has preferred Civil Application No. 8178 of 2000 as bill (Annexure :A) to the application was issued calling upon the assessee to make the payment of Rs. 27,346/- which was shown as the amount in arrears and the current tax. The applicant pointed out that for the assessment year 1993-94, the GRV determined by the Valuation Officer was set aside and was fixed at Rs. 6,534/= and for the later year, the Small Cause Court has determined the GRV at Rs. 4,340/= and therefore, there was no substance in making any demand. Though, by writing letters enclosing the documentary evidence including the copy of the judgment rendered in Municipal

Valuation Application No. 634 of 1995 the assessee pointed out that nothing remains due from him, there was no earthly reason for the Corporation to issue the bill for the alleged outstanding dues. Along with the application (Annexure:B), the assessee also produced copy of letter dated 29.8.2000 addressed to the Assessor & Collector of the Corporation, pointing out that on 19.7.99, by registered letter, the Corporation is informed that the premises is in non-use position since January, 1999. The Deputy Assessor & Collector was keen to see the place on 27th March, 2000,but he did not turn up and that was also intimated by the letter dated 29.3.2000. The assessee pointed out that he is entitled to claim refund of taxes from and onwards 1.1.99 as it was already intimated that the the premises is not in use. The assessee pointed out in his letter that nobody in the office of the Corporation and concerned officer has bothered to read his reply. All these details were also submitted in the Schedule. The assessee pointed out that on 3.7.99, bill no. 3706 was issued for current tax for the year 1999-2000 and outstanding dues to the tune of Rs. 21,309-60 were shown. Reply was given dated 31.7.99 under acknowledge receipt C -486. The assessee pointed out that when the he was personally conveyed by the concerned Clerk in the concerned branch that on account of mistake in operating the computer, entry has been made for making demand towards outstanding dues.

##. Again, on 16.12.99 by outward no. 1584, demand was raised for Rs. 25,800 + Rs. 169.70 to which the assessee replied by the registered letter along with documentary evidence addressed to the Deputy Assessor & Collector and Municipal Commissioner. No reply to the said letter has been received by the assessee. Despite the concerned Clerk having admitted about the mistake in operating the computer, again demand regarding outstanding dues was made. Again on 21.2.2000, bill no. 3186 was issued. The assessee paid up the said tax under protest.

##. The assessee also pointed out in the above-referred letter that for the year 1993-94, the Valuation Officer determined the GRV at Rs. 25,862/= for which Harkat application no. 746 was submitted and the appellate officer by the order dated 30th March, 1994 determined the GRV at Rs. 6,534/=. The said amount has been paid by the assessee and the appeal being Municipal Valuation Appeal No. 6876/95 is pending before the Small Cause Court. Despite the order made by the appellate officer on 30th Marcy, 1994 for the assessment year 1994-95, again the Valuation Officer made assessment and

determined the GRV at Rs. 25,862/= for which Harkat application no. 67 was submitted. As said earlier, on 17.1.95, the appellate officer confirmed the order made by the Valuation Officer.

##. It was the duty of the Corporation to give effect to the order made by the appellate officer earlier and it ought not to have rejected the Harkat application mechanically. If the effect of the order of the earlier appellate officer would have been given, it could have been said that the appellate officer has applied his mind and for subsequent years has followed the decision of the Small Cause Court. The assessee pointed out that even for the years 1995-96 to 1998-99, the Valuation Officer has assessed the premises and against the same, Harkat applications have been preferred which have been decided by the appellate officer and accordingly, the amount has been paid by the assessee. The assessee has also preferred appeal against the order made by the appellate officer. Objections against the assessment for the assessment year 1999-2000 have also been filed. Thus, the assessee has submitted that it is very clear from these records that the appellate officers without considering the decisions rendered by the Small Cause Court, every year determined the GRV contrary to the order made by the Court without any basis. We find much force in the contention raised by the assessee. We are informed that the excess amount has been paid to the assessee and nothing is to be recovered in view of the bill Annexure : A. This has happened at the time of hearing of the appeals and the applications for stay and therefore, no relief is required to be granted except the direction to pay interest as aforesaid.

##. It is required to be noted that Assessee is required to pay amount of tax and if it is found to be excessive or unwarranted, then the excess amount is required to be refunded immediately. When the Corporation is enjoying the amount of public which is ultimately found that it was not entitled to collect, then there is no reason as to why the assessee should be deprived of the benefit of the interest which otherwise he was entitled if he had deposited the amount in the Bank or would have invested the money with a view to earn. The Corporation has used these funds and the assessee is deprived of the benefit of this amount. In our opinion, the decision of the Apex Court in the case of KERALA STATE ELECTRICITY BOARD vs. M.R.F. LIMITED reported in 1996 (1) SCC 597 has been rightly pressed into service by the Assessee. In paragraph 24, the Apex Court observed as under:

"In giving full and complete relief in an action for restitution, the Court has not only power but also a duty to order for mesne profit, damages, costs, interest etc. as may deem expedient and fair conforming to justice to be done in the facts of the case. But in giving such relief, the Court should not be obligious of any unmerited hardships to be suffered by the party against whom action by way of restitution is taken. In deciding appropriate action by way of restitution, the court should take a pragmatic view and frame relief in such a manner as may be reasonable, fair and practicable and does not bring about unmerited hardship to either of the parties."

In the facts and circumstances of the instant case, we are of the view that mere refund of the excess amount collected by way of tax from the petitioner is not enough, but Corporation must be directed to pay 15% interest on the amount refunded. The Corporation is, therefore, directed to pay, within four weeks from today, 15% interest on the amount refunded from the date of collection of the excess amount by the Corporation till the date the excess amount is refunded to the petitioner.

##. Once judgment is delivered by the competent Court, it becomes the bounden duty of the officers of the Corporation to give effect of the judgment. How to give the effect of the judgment is known the Corporation. We fail to understand that even this Corporation is not giving effect to the order made by its own appellate officers for the subsequent years. it appears that the valuation officer has not bothered to examine the record of the previous year. In several cases we have come across complaints where judgments are not given effect and therefore every year the assesses are required to rush to the Court. We have indicated that it increases the burden of the Court unnecessarily and it decreases the size of the pockets of the assessee unnecessarily, without any fault on their part. Therefore, it is the bounden duty of the Corporation to give effect to the judgment of the Court immediately.

##. In the Civil Application No. 8178 of 2000 for stay, one Maheshbhai M. Bhatt has filed affidavit, inter alia pointing out out that he has gone through the papers of the above matter and for the limited purpose, he is filing the affidavit. However, despite calling upon the Corporation, no record has been produced before this Court. In para 2 of the affidavit dated 21st June, 2001,

the deponent has stated that the arrears of tax of the applicant upto 2000-2001 was Rs. 22,122.60 ps. He has further stated that arrears the current dues of Rs. 4490.40 ps. were added and therefore, total dues were to the tune of Rs. 26,613.00. Yet, we find that the bill is issued for the sum of Rs. 27,346/-. It is stated in the affidavit that appeal was preferred on 15.11.2000 before the Deputy Municipal Commissioner who took the decision that the sum of Rs. 13,803/- for the assessment year 1993-94 and Rs. 8776/= by way of interest stands cancelled i.e. Rs. 22,579/- was ordered to be cancelled from the dues of the applicant. Letter dated 28.11.2000 was issued which is produced on the record. The said affidavit indicated that Rs. 1129.35 ps. remained outstanding as on 31.3.2001. In para 3 of the aforesaid affidavit, it is stated that the applicant was required to pay Rs. 4033.70 ps. upto 31.3.2001. It is further stated in the above affidavit that the assessee was entitled to the refund of Rs. 2904.35 for the vacant premises for the year 1999-2000. In para 4 of the affidavit, the deponent has stated that for the year 1997-98, the tax was Rs. 4351.98 ps. and thereafter from 1997-98, it was increased and the tax is fixed at Rs. 4490.40 ps. It is contended that the applicant paid tax after stipulated time and hence was required to pay the interest which is shown in the aforesaid figures. There is no breakup of this amount and interest and therefore, it is difficult to understand how the amount is calculated.

##. It appears that after the applicant approached the Court by preferring Civil Application, a letter was written to the assessee, copy of which is produced along with the affidavit. If the assessee would not have approached the Court, possibly, he would have been called upon to make the payment as stated in the bill (Annexure :A). It appears that despite several decisions of the Courts, the assessing officers are not making assessment in accordance with law.

##. In view of what is stated above, We find no error committed by the Small Cause Court in fixing the GRV at Rs. 4,340/- for the assessment year 1994-95 and therefore, the appeal preferred by the Corporation being First Appeal No. 3503 of 2001 requires to be dismissed. Notice is discharged. Consequently, Civil Application No. 9083 of 2001 for stay also stands dismissed.

##. So far as the First Appeal No. 75 of 1999 preferred by the assessee is concerned, the assessee stated that the assessee does not pursue the appeal forcefully as the

Small Cause Court decided the GRV after following the decision of this Court in the case of Rajnikant Jesingbhai Sheth (supra) and therefore, we dismiss the said appeal preferred by the assessee. Notice is discharged.

##. Civil Application No 8178/2000 preferred by the assessee stands disposed of as the Corporation has refunded the amount and therefore, except the order of interest no further orders are required to be passed. The appellant - Ahmedabad Municipal Corporation is held liable to pay cost of these proceedings which is quantified at Rs. 7500/= and the amount of cost shall be deposited within a period of three weeks from today. On amount being deposited, the Registry shall pay the same to the respondent - original appellant.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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